

MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING
July 20, 2023
8:00 P.M.

The West Orange Zoning Board of Adjustment held a regular meeting on July 20, 2023, commencing at 8:00 PM utilizing the virtual Zoom platform.

Chairperson Philip D. Neuer called the meeting to order at approximately 8:00 PM. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle, and the Star-Ledger and posted on the Township Bulletin Board in accordance with the "Senator Byron M. Baer Open Public Meetings Act."

Chairperson Neuer asked everyone to please rise for the Pledge of Allegiance.

Alice Beirne, Esq., Board Attorney read the opening statement.

ROLL CALL

Present: William Michael Barbee, Michael Dannemiller
Jerome Eben, Philip D. Neuer,
Peter Scalora, Irv Schwarzbaum,
Brent D. Scott, Mark Sussman,
Alice Weiss
Absent: Peter Ricci,
Also Present: Paul Grygiel, Consulting Planner for the Township
John Hess, Consulting Engineer for the Township
Alice Beirne, Esq., Board Attorney
Diana L. Chandler, Board Secretary

ANNOUNCEMENTS

Future Meetings: August 17, 2023 (Regular Meeting)
September 21, 2023 (Regular Meeting)
October 19, 2023 (Regular Meeting)

- Application ZB-23-01 Williams/6 Merrywood Drive is being carried to the September 21, 2023 Regular Meeting.

MINUTES

Adopt:

May 18, 2023, Regular Meeting Minutes

Motion: Chairperson Neuer

Second: All to None

Barbee:	Y	Scott:	Y
Dannemiller (Alt. 1)	-	Sussman (Alt. 3):	Y
Eben:	Y	Weiss:	Y
Ricci:	-	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

June 15, 2023, Regular Meeting Minutes

Motion: Chairperson Neuer

Second: All to None

Barbee:	Y	Scott:	Y
Dannemiller (Alt. 1)	Y	Sussman (Alt. 3):	Y
Eben:	Y	Weiss:	-
Ricci:	-	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

June 22, 2023, Special Meeting Minutes

Motion: Chairperson Neuer

Second: All to None

Barbee:	-	Scott:	Y
Dannemiller (Alt. 1)	Y	Sussman (Alt. 3):	Y
Eben:	-	Weiss:	-
Ricci:	Y	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

DISCUSSION/APPROVAL OF NEW BOARD ATTORNEY

- Chairperson Neuer discussed how a Board consisting of Mr. Barbee, Mr. Schwarzbaum, and himself screened the applicants to take the place of Ms. Alice Beirne as Board Attorney. Mr. Scott wanted it noted that he has an issue with the selection process as he claims to have not gotten other resumes.

Motion: I. Schwarzbaum

Second: W.M. Barbee

Barbee:	Y	Scott:	A
Dannemiller (Alt. 1)	Y	Sussman (Alt. 3):	Y
Eben:	A	Weiss:	Y
Ricci:	-	Chairman Neuer:	Y
Scalora (Alt. 2)	Y		
Schwarzbaum:	Y		

- Mr. Scott wanted it noted that his abstaining from voting has nothing to do with Mr. Warner as a person, or an attorney, but the selection process from which he was chosen.

EXECUTIVE SESSION TO DISCUSS LITIGATION

- Commencing at 8:23 PM utilizing the virtual Zoom platform

ROLL CALL

Present: William Michael Barbee, Michael Dannemiller
Jerome Eben, Philip D. Neuer,
Peter Scalora, Irv Schwarzbaum,
Brent D. Scott, Mark Sussman,
Alice Weiss
Absent: Peter Ricci,
Also Present: Alice Beirne, Esq., Board Attorney
Steve Warner, Esq., Board Attorney
Diana L. Chandler, Board Secretary

8:42 PM Return to Regular Meeting with confirmation of all Board Members returning.

SWEARING IN

- Township Professional, *Mr. Paul Grygiel* (Consulting Planner) and *Mr. John Hess* (Consulting Engineer) were sworn under oath.

RESOLUTIONS

1.) ZB-23-03 - Penn - 11 Highland Place (Approved 6/15/2023 & Adopted 7/20/2023)

Block: 86.05; Lot: 18; Zone: R-5

11 Highland Place

The request for interpretation of whether the electrolysis business qualifies as a "home occupation" was approved at the June 15, 2023, Regular Meeting. The resolution was adopted at the July 20, 2023 Regular Meeting.

Motion: Chairperson Neuer

Second: I. Schwarzbaum

Barbee:	Y	Scott:	Y
Dannemiller (Alt. 1)	Y	Sussman (Alt. 3):	-
Eben:	Y	Weiss:	-
Ricci:	-	Chairman Neuer:	Y
Scalora (Alt. 2)	-		
Schwarzbaum:	Y		

2.) ZB-23-04 Seivright/13 Bromley Drive (Approved 6/15/2023 & Adopted 7/20/2023)

Block: 152.12; Lot: 7; Zone: R-5

13 Bromley Drive

The application seeking "c" variances for expansion of the existing house was approved at the June 15, 2023, Regular Meeting. The resolution was adopted at the July 20, 2023 Regular Meeting.

Motion: Chairperson Neuer

Second: I. Schwarzbaum

Barbee:	Y	Scott:	Y
Dannemiller (Alt. 1)	Y	Sussman (Alt. 3):	-
Eben:	Y	Weiss:	-
Ricci:	-	Chairman Neuer:	Y
Scalora (Alt. 2)	-		
Schwarzbaum:	Y		

APPLICATIONS

1.) ZB-22-08/Flores (156 Main Street)

(Carried from 6/15/2023)

Block: 89; Lot: 21; Zone: B-1

156 Main Street

Seeking variances for construction of a new two-family dwelling.

PRESENTATION

- Mr. Frank Guagliardi, Esq. entered the record on behalf of the applicant, Jose Flores, and gave a brief synopsis of previous meetings' testimony.
- Ms. Sandra Caceres, PE entered the record, was sworn under oath, and confirmed that there were no changes to her qualifications.

BOARD QUESTIONS

- Chairperson Neuer asked if the driveway is wide enough to turn around. Ms. Caceres said no. Chairperson asked if the residents will still have to back out. Ms. Caceres answered yes.
- Mr. I. Schwarzbaum asked how many cars can the driveway accommodate. Ms. Caceres said four. Two in the garage and two in the driveway.
- Mr. J. Eben referenced the concrete stoop in front and asked since it has four risers if it would be considered a steep slope. Ms. Caceres said no. Mr. Guagliardi said that it is a gradual slope. Ms. Caceres said the slope is about 1%. Chairperson said that nonspecifics are not acceptable to the Board.
- Mr. Eben asked if the dirt for the building is going to be compromised and if there will be soil relocation because of the construction. Ms. Caceres said yes and it will install for the foundation of the structure.
- Mr. Scott asked what was there prior. Ms. Caceres said she assumes there was a house.

PROFESSIONALS QUESTIONS

- Mr. Grygiel asked about the depth of the driveway. Ms. Caceres said yes to making room for spaces. Mr. Grygiel opined on the record that the slope in question is man-made so it is not a steep slope as per Chapter 25.28.5 Subsection C of the Municipal Land Use Law.

PUBLIC QUESTIONS

- Ms. Megan Brill (1 Oakcrest Road) said that the Downtown West Orange Alliance is concerned about backing into Main Street for a six (6) bedroom property and how many parking spaces are required for it. Ms. Caceres deferred to their Planner. Mr. Guagliardi testified stating that the requirement is four spaces as per a memo by Mr. Grygiel.
- Mr. Kevin Malanga (57 Ridge Road) asked about parking and mechanics of such with 2 cars and a garage/driveway.

Mr. Guagliardi confirmed and consented to an extension with an adjournment to the September 21, 2023, Regular Meeting. Chairperson Neuer announced that ZB 22-08 Flores is being carried to the September 21, 2023, Regular Meeting with no further notice.

BREAK 9:19 PM- 9:32 PM

2.) ZB-22-13 / MBP Realty LLC (470 Eagle Rock Avenue) (Carried 6/15/2023)

470 Eagle Rock Avenue

Block: 153; Lot: 38; Zone: B-2

The applicant seeks C & D variances with preliminary and final site plan approval to build two (2) restaurant buildings with accessory drive-thru components.

EXHIBITS:

A-1: Colorized Aerial Exhibit (Dated April 20, 2023)

A-2: Colorized Alternate Site Plan Exhibit (Dated May 18, 2023) with no revision date

A-3: Signage Popeyes (Dated- 7/20/2023)

A-4: Signage Sonic (Dated 7/20/2023)

PRESENTATION

- Mr. Benjamin Wine, Esq. entered the record on behalf of the applicant, and gave a summation of the May 17, 2023 testimony of Mr. Matt Bersch. During this summation, Chairperson Neuer asked for confirmation of signatures on the application to be received by the Board before their next appearance before the Board.
- Mr. Bersch entered the record and confirmed that there are no changes in his credentials.
- Mr. Bersch presented **Aerial Exhibit A1 revised (Dated- July 20, 2023)** which displays that the property is currently vacant (decrepit fencing with the building boarded up) existing Stormwater displays the B2 Zone extends to the North Side of the property with a conditional use and the R6 Zone across Rosney Terrace.
- Mr. Bersch presented **Site Plan Rendering Exhibit A2 (Dated – July 20, 2023)** drawing sheet #9. There will be no internal patronage area only drive-thrus. Some advancements to the property are going to be in landscaping and lighting. The site has full movement with the help of a Traffic Engineer to restrict to only a right-hand turn. Driveways will be 30 feet wide. There will be a bike rack installed in front of Sonic. 27 parking spaces will be available on the property with one Electric Vehicle charging station and one space that will be ADA compliant.
- Signage will consist of a menu board, ordering board, etc. Popeyes will have inside ordering, mobile ordering, and drive-thru. Sonic will have mobile, doorside, and mobile ordering. A 10x20 trash enclosure with a matching façade will also be on the property. Fencing on the property along Rosney Terrace will be board on board.
- There will be two (2) deliveries taking place for Popeyes. One for all supplies except chicken and the second for chicken. It will be occurring two to three times a week between the hours of 6:00 AM- 8:00 AM.

- Sonic deliveries will be occurring overnight and will have a separate loading zone since it is not operational; Mr. Bersch then opined to say that they will meet all requirements except for impervious coverage.
- Mr. Bersch said that there will be 312 planting around buildings and all frontages. Including 12 shade and ornamental trees preserving 10 trees along the property line to enhance the buffer to provide additional screening; decreasing impervious coverage by 3,100 square feet, Major development meets water quantity and quality.
- Drainage from Northwest and maintenance of existing patterns to prevent runoff into Eagle Rock Avenue.
- New utilities associated with grease traps through Drive Thru lanes. Popeyes might connect to a pole on Eagle Rock Avenue.
- Lighting for the property will all be dimmed during non-operational hours. For Popeyes, it would all be LED-featured lighting and Sonic would not have any building-mounted lighting.
- There would be one freestanding (pile on) sign for each business.
- Mr. Bersch presented **EXHIBIT A3 Signage Popeyes (Dated- 7/20/2023)** where the sizes of the signs' width and the fact that they were internally illuminated not outside of operating hours. Architectural Elevation but using demonstrative purposes PB2 Exterior Elevation (Revision Date – 7/5/2023). Orange Channel letters 39.1 feet of interior illumination and for the circular seal. It will be a white acrylic graphic facing south with a height of 199 square feet façade of signage.
- Mr. Bersch presented **EXHIBIT A4 Signage Sonic (Dated 7/20/2023)** describing the free-standing pile on sign with reader board. Mr. Bersch said that the applicant is asking for a waiver for signage of about 16 feet high (approximately 43 square feet). All signage will be illuminated internally. Mr. Bersch testified to particulars of the sign having the Sonic logo in channel letters with a cherry referencing Sheet PB-2 Elevation Sonic (Dated -May 4, 2023). The main reason for needing the sign variance is that in Mr. Bersch's opinion, Sonic needs four (4) signs and only one (1) is permitted as per the Ordinance.
- Mr. Bersch and Chairperson Neuer went through the components brought up in the CME letter #2 (Dated- July 20, 2023). The applicant will comply with all COAH requirements. 4) Waivers- variables, denied A-D updated everything 3) hours of operation were previously testified to during the May 18, 2023, regular meeting. 5) Electric Vehicle charging stations; 6) No access proposal = ADA, only one space for the property, not one per business. 7) testified by Planner/Applicant that Sonic will be operational with a car hop (stop/control by person lane usually on roller skates), and ordering stations, 8) the applicant will comply and confirmed it as a condition 9) Dumpsters – there will be two (2). One for trash and one for cardboard. 11) Labelling. 12) Clustical – updating Board on Board fencing. 14) To wait for the traffic engineer 15) Landscaping (tree replacement)

PROFESSIONALS QUESTIONS

- Mr. Hess asked if this property is classified as a part of the Stormwater Department of Environmental Protection requirement. Mr. Bersch said yes. In Mr. Hess' opinion, this applicant has demonstrated that they comply. Mr. Hess also stated that the drainage is

missing the inlet to see if the address is an issue. Mr. Hess also stated that the concentration on Sheet 7 redesign for the roof. Mr. Hess asked if the second drive-thru window still backed up and no bypass lane with no way to get out of the lane. The second car will then have access to the typical pickup window. The white line on the plans will be the striping for the drive-thru and traffic lanes. Mr. Hess asked about the WB50 Delivery and whether or not it will be taking place overnight. If so, will the trucks be refrigerated? Mr. Bersch said that some trucks will be refrigerated because they are delivering food but will get confirmation on the sound. Mr. Wine said that the Sound Engineer testified. Mr. Hess testified that the Fire Truck turning movement site seems only to the front, what about the rear of the property? Mr. Wine said that the intention is to return with the Traffic Engineer to testify regarding this and that they will deal with it at that time.

- *Mr. Wine confirmed an extension of the application to the end of September 2023.*
- *Chairperson Neuer announced at the next appearance of this application (ZB-22-13 MBP Realty LLC), Mr. Grygiel, the Board and Public questioning of Mr. Bersch will occur.*

Chairperson Neuer announced that ZB 22-13 MBP Realty is being carried to the August 17, 2023, Regular Meeting for noticing purposes with the intent to schedule a Special Meeting for September 2023.

Chairperson Neuer adjourned the meeting at 10:50 PM.

Adopted:

9/21/2023


Diana L. Chandler, Secretary